MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 18 OF 1996

1. PRABHAKAR VINAYAK NATU)
   Food Inspector)
   Thane Municipal Corporation)
   Mahapalika Marg, Dr. Almeida)
   Road, Thane 400 602)
2. VIJAY RAMKRISHNA DESHMUKH)
   Chief Food Inspector, Thane)
   Municipal Corporation, Thane)

VERSUS

1. INDERRAJ KHADERU GUPTA)
   Seller)
2. RAMNARAYAN KHADERU GUPTA)
   Proprietor)
   M/s. Vadria General Stores)
   Road No. 16, Wagle Estate,)
   Thane)
3. THE STATE OF MAHARASHTRA) RESPONDENTS

Ms. Poonam Kandale h/f R. S. Apte for appellants

Mr. S. V. Kotwal for R-1

Mrs. M. M. Deshmukh, APP

CORAM: **SMT. RANJANA DESAI, J.**

DATE: SEPTEMBER 18, 2007.

ORAL JUDGMENT:

. In this appeal original complainant, the Food Inspector and Chief Food Inspector, Thane Municipal Corporation have challenged the judgment and order dated 30/6/94 delivered by Chief Judicial Magistrate, Thane in C.C. No. 2121/1986. By the impugned judgment and order, the learned Magistrate has acquitted the respondents of all the charges levelled against them under the Prevention of Food Adulteration Act, 1954 ("the said Act" for short) read with Prevention of Food Adulteration Rules, 1955 ("the said Rules" for short). Respondents 1 and 2 are original accused 1 and 2 respectively. For the sake of convenience I shall refer to the accused as per their description in the trial court.

2. At the trial, the case of the Food Inspector was that on 17/8/85 at 10-15 a.m. he visited the shop of the accused under the name and style of M/s. Vadria General Stores at Road No. 16, Wagle Estate, Thane. Accused 2 is the proprietor of the said shop and accused 1 is an employee of accused 2.

3. The Food Inspector disclosed his identity and his intention to take sample of the chilli powder stored in the shop for the purpose of analysis. He purchased the sample, paid its' price, divided the sample in three equal parts and followed the entire procedure of sampling, packing and sealing as per the rules. One of the samples was sent to the Public Analyst. The report of the Public Analyst indicated that the sample of chilli powder did not conform to the parameters prescribed under the said rules. Therefore, all the papers were sent to the Joint Commissioner, Food and Drug Department for obtaining sanction to lodge the prosecution. After sanction was granted the Food Inspector lodged the complaint against the accused in the court of Chief Judicial Magistrate, Thane.

4. Pursuant to the complaint the accused appeared in the court. Evidence before charge was recorded. Thereafter after hearing the learned counsel appearing for the Food Inspector and also for the accused, detailed charge was framed against the accused. The accused pleaded not guilty to the charge.

5. In support of its case, the prosecution examined in all five witnesses. The star witness of the prosecution is PW 4 Food Inspector Prabhakar Natu.

6. The accused denied the case of the Food Inspector. According to the accused they have been falsely implicated. After perusing the evidence on record, the learned Magistrate came to a conclusion that the Food Inspector was not competent to file the charge-sheet; that the Food Inspector had failed to prove that procedure of sampling, packing and sealing of the samples was followed and that the Food Inspector had failed to prove that Public Analyst's report is admissible in evidence. He, therefore, acquitted the accused. The said judgment and order is challenged in this appeal.

7. I have heard at some length Mr. Apte, learned counsel appearing for the appellant who was ably assisted by Smt. Poonam Kandale. Mr. Apte contended that the impugned judgment and order is perverse and hence it should be set aside. He submitted that the learned Magistrate was wrong in holding that PW 4 Prabhakar Natu was not a competent person to take sample and initiate

proceedings. He submitted that the necessary notification is on the file and, therefore, learned Magistrate could not have recorded such a conclusion.

8. In support of his submissions he relied on the judgment of the Gujarat High Court in **Manka Hari v. The State of Gujarat, AIR 1968 GUJARAT 8**8 and a judgment of the Kerala High Court in **State of Kerala v. V.P. Enadeen, AIR 1971 KERALA 19**3. He further submitted that the learned Magistrate erred in holding that the complainant has failed to prove that clean bottles were used for sampling purpose. In this connection, the learned counsel relied on judgment of this court in **State of Maharashtra v. Shri Popat Panachand Shah & Anr., 2004 ALL MR (Cri.) 102**2. He then submitted that the learned Magistrate erred in accepting the submission advanced on behalf of the accused that the report of the Public Analyst does not disclose any data of analysis and the name of analyst and, therefore, the said report cannot be taken into consideration. In this connection, the learned counsel relied on judgment of the Supreme Court in **Dhian Singh v. Municipal Board, Sharanpur & Anr., AIR 1970 SC 31**8.

9. The learned counsel then urged that the learned Magistrate erred in holding that because there was no documentary evidence about the ownership of the shop, the prosecution could not have been initiated against the accused. In this connection he relied on judgment of the Supreme Court in **State of Orissa vs. K. Rajeshwar Rao, (1992) 1 SCC 365**. He further submitted that the learned Magistrate fell into an error in observing that the prosecution suffers from infirmity because the sanction order issued by the sanctioning authority does not mention reasons as to on what ground it has come to the conclusion that sanction was necessary in the public interest. In this connection, the learned counsel drew my attention to the judgment of this court in **Shri Popat Shah's case (supra)** and contended that as per Section 114 of the Evidence Act, it must be presumed that official acts have been regularly performed. He submitted that the Food Inspector was not even cross-examined on this aspect and, therefore, it was not open for the appellant to urge this point. The learned counsel, therefore, contended that the impugned judgment and order be set aside and the respondents be convicted in accordance with law.

10. As against this Mr. Kotwal, the learned counsel appearing for the accused contended that the impugned judgment and order cannot be characterised as perverse. He submitted that so far as contents of the Public Analyst's report are concerned, the view taken by the learned Magistrate cannot be faulted. He drew my attention to the judgment of the Supreme Court in **Kisan Trimbak Kothule & Ors. v. State of Maharashtra, 1976 (II) Prevention of Food Adulteration Cases 188**. While considering similar question, the Supreme Court has observed that it is not enough for the Public Analyst to give a few mechanical data. The Public Analyst report must help the court with something more of the process by which the conclusion has been arrived at. The learned counsel submitted that similar view has been taken by a learned Single Judge of this court in **State of Maharashtra v. Baburao Daga Suryavanshi, 1990(I) Prevention of Food Adulteration Cases 94**. The learned counsel then contended that under Section 13(3) the certificate issued by the Director of Central Food Laboratory supersedes the report given by the Public Analyst under Section 1. He submitted that admittedly the accused had made an application to the learned Magistrate that sample be forwarded to

the Central Food Laboratory for analysis. That application was granted and the sample was in fact sent to Central Food Laboratory. However, while the report of the Public Analyst is dated 9/8/85, the prosecution was launched on 27/6/86. Delay in launching the prosecution, has, therefore, caused prejudice to the accused. Their valuable right under Section 13(3) is affected by this delay. In this connection the learned counsel relied on **AIR 1967 SC 970, Municipal Corporation of Delhi v. Ghisa Ram**. He further submitted that the charge does not state which rule is contravened by the accused and, therefore, serious prejudice is caused to the accused. He further submitted that Joint Commissioner who granted sanction should have been examined. It was necessary for the sanctioning authority to prove the sanction. On this ground also the prosecution is vitiated. The learned counsel submitted that in any event the view taken by the learned Magistrate is a reasonably possible view and hence this court should not disturb it in this appeal against acquittal.

11. In **Tota Singh & Ors. v. State of Punjab, AIR 1987 SC 1083**, the Supreme Court has laid down the principle which the appellate court should follow

while dealing with an appeal against acquittal. The relevant observation of the Supreme Court may be quoted:

> "The mere fact that the Appellate Court is inclined on a reappreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two

> views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous".

In the light of the above observations of the Supreme Court, it will be necessary for this court to find out whether the judgment of the trial court suffers from any manifest illegality or whether it could be called perverse. If the view taken by the trial court is a reasonably possible view. This court would not interfere with it in this appeal against acquittal.

12. So far as the finding of the learned Magistrate that because there is no evidence to indicate that the shop was owned by the accused they could not have been charged under the said Act is concerned, I am of the opinion that it is clearly erroneous. In this connection reliance placed by the learned counsel for the appellant on

the judgment of the Supreme Court in **K. Rajeshwar Rao's case (supra)** is apt. In that case, the Supreme Court referred to its earlier judgment on the point and observed as under:

> "The Act is a welfare legislation to prevent health hazards by consuming adulterated food. The mensrea is not an essential ingredient. It is a social evil and the Act prohibits commission of the offences under the Act. The essential ingredient is sale to purchaser by the vendor. It is not material to establish the capacity of the person vis-a-vis the owner of the shop to prove his authority to sell the adulterated food exposed for sale in the shop. It is enough for the prosecution to establish that the person who sold the adulterated article of food had sold it to the purchaser (including the Food Inspector) and that Food Inspector purchased the same in strict compliance with the provisions of the Act. As stated earlier the sanctioning authority has to consider the material placed

> before it whether the offence of adulteration of food was committed and punishable under the Act. Once that satisfaction is reached and the authority is competent to grant the sanction, the sanction is valid. It is not necessary for the sanctioning authority to consider that the person who sold is the owner, servant, agent or partner or relative of the owner or was duly authorised in this behalf."

13. In this case accused No. 2 is a proprietor of the shop and accused 1 was selling the chilli powder. In the circumstances, the prosecution launched against them cannot be faulted because documentary evidence pertaining to the ownership of the shop was not placed on record by the police.

14. The learned Magistrate is also not right when he observes that the Food Inspector was not competent to initiate prosecution. It is pertinent to note that notification appointing him as Food Inspector is on record at Exhibit-30. Similar point was raised before the Gujrat High Court in **Manka Hari's case (supra)**. The point was not

raised in the trial court. The Gujrat High Court observed that this point had nothing to do with the ingredients of the offence. It basically involves examination of facts and, therefore, should have been raised in the trial. The Gujrat High Court then observed that in the complaint, the complainant was described as a Food Inspector. Sanctioning Authority would not have granted sanction, if the complainant was not duly appointed. It is, therefore, permissible to presume that the Food Insopector had necessary qualifications in the absence of challenge to this factual aspect in the trial court. In this case also as regards the Food Inspector's qualification, there is no challenge raised by the accused in the trial court. None of the witnesses have been cross-examined on these lines. The learned Magistrate was, therefore, clearly in error in observing that the Food Inspector was not competent to initiate prosecution. I concur with the view taken by the Gujrat High Court in **Manka Hari's case**. This submission must, therefore, fail.

15. So far as the point raised by Mr. Kotwal about Section 13(3) of the said Act on the basis of the judgment of the Supreme Court in **Municipal**

Corporation of Delhi's case (supra) is concerned, it was not raised in the trial court. None of the witnesses were questioned about the alleged delay in launching prosecution and the resultant alleged prejudice caused to the accused. It is, therefore, not possible for me to take this point into consideration at this stage.

16. The learned Magistrate also held that the Public Analyst's report does not disclose any data of analysis. The name of the analyst is also not mentioned. The learned Magistrate is factually wrong because the report of the Public Analyst does mention the data of analysis. It does not, however, contain the process of the analysis.

17. In this connection my attention is drawn by the learned counsel for the appellant to the judgment of the Supreme Court in **Dhian Singh's case (supra)** where the Supreme Court after following the view taken by Allahabad High Court in **Nagar Mahapalika of Kanpur v. Sri Ram, AIR 1964 Allahabad 270** held that the report of the Public Analyst need not contain the mode or particulars of analysis nor the test applied but should contain the result of analysis namely, data from which it

can be inferred whether the article of food was or not adulterated as defined in Section 2(1) of the Act.

18. Judgment of the Supreme Court in **Kisan Trimbak Kothule's case (supra)** is also shown to me where the Supreme Court has held that it is not enough to give a few mechanical data in the Public Analyst's report and it must help the court with something more of the process by which the conclusion has been arrived at. Following the same judgment the learned Single Judge of this court has also taken a view in **Baburao Daga Suryavanshi's case (supra)** that the Public Analyst's report should have contained the qualification of the Public Analyst and the process employed by him for analysis. The Learned Single Judge confirmed the order of acquittal. It is pertinent tonote that the judgment of the Supreme Court in **Kisan Trimbak's case (supra)** is a later judgment. In the facts of this case, however, it is not necessary for me to go into this aspect of the case because the order of acquittal will have to be confirmed on a very sound ground which has also weighed with the learned Magistrate.

19. The Food Inspector has in his cross-examination stated that about a month back he had obtained bottles in which the samples were kept from a store. He has stated that he had cleaned and dried the bottles four days prior to the incident. In prosecutions under the said Act taking samples byfollowing the correct procedure is of utmost importance. It is true as observed by this court in **Popat Panachand Shah's case (supra)** if the prosecution is able to demonstrate that there is substantial compliance of the requirement of rules 14 and 16 that would suffice. However, in this case, the Food Inspector in his evidence states that the bottles were cleaned by him four days back. The report of the Public Analyst indicates marginal adulteration. In such circumstances if the bottles were cleaned four days back it is possible to urge that the impurities found in the sample were the result of the fact that cleaned bottles were not used. It was necessary for the Food Inspector to ensure that bottles were cleaned before samples were drawn. His statement that bottles were cleaned four days back goes to the root of the matter. The view taken by the learned Magistrate that cleaned bottles were not used for sampling purpose is,

therefore, reasonably possible view which I am unable to disturb in this appeal against acquittal.

20. In the circumstances, in my opinion, no interference is necessary with the impugned judgment and order. The appeal will have to be, therefore, dismissed. However, before, I dismiss the appeal, I must record my appreciation for the efforts made by Smt. Poonam Kandale, the learned counsel who assisted Shri Apte, the learned counsel for the appellants. The appeal is dismissed.

JUDGE.

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VERSUS

INDARAJ KHADERU GUPTA & ORS. .. RESPONDENTS

Smt. Poonam Kandale h/f R. S. Apte for

appellants

Mr. S. V. Kotwal for R-1

Mrs. M. M. Deshmukh, APP

CORAM: **SMT. RANJANA DESAI, J.**

DATE: SEPTEMBER 18, 2007.

OPERATIVE PART OF THE ORDER

. For the reasons stated in the oral judgment, this court has dismissed the appeal.

JUDGE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 18 OF 1996

DATE OF DECISION:18/9/2007

Submitted for approval.

THE HON’BLE (SMT.) JUSTICE RANJANA DESAI:

THE HON’BLE SHRI JUSTICE :

1. Whether Reporters of Local Papers be allowed to see the Judgment?)

2. To be referred to the Reporters or not?)

3. Whether Their Lordships wish to see the fair copy of the Judgment?)

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?)

5. Whether it is to be circulated to the Civil Judges?)

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad and Goa Offices?)